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IP and the Far East Conference: Industry Specific Anti-Piracy Challenges & Strategies in the Far East

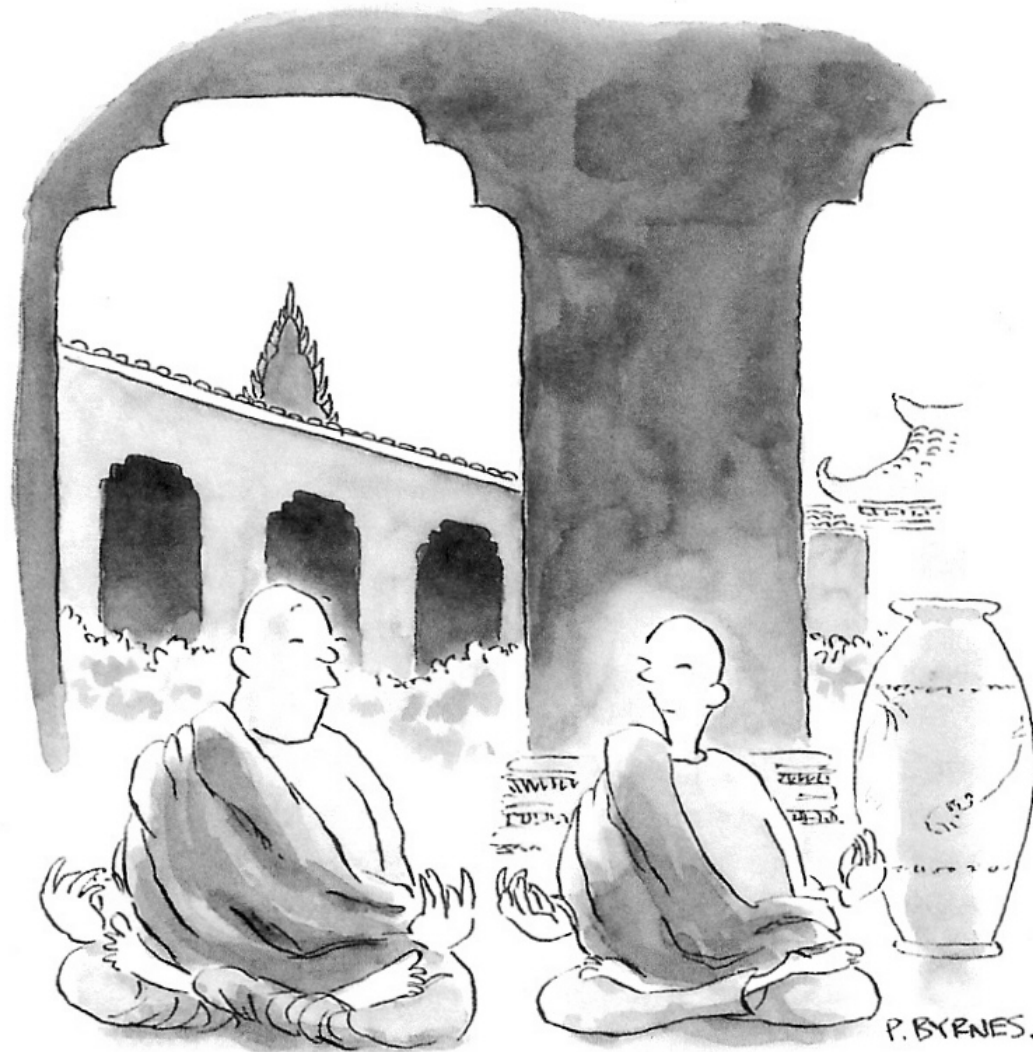
**A Videogame & Biz Software Guy's
View**

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- **What is ‘success’ in fighting piracy in Asia?**
- **Criminal Enforcement Actions: Challenges and Strategies**
- **Don’t Forget the Big Picture**
- **Don’t Make it Easy for Them**



“Are you not thinking what I’m not thinking?”

What is 'success' in fighting piracy in Asia?

What Are Your Anti-Piracy Goals?

- **Common traps:**

- expecting recovery of lost profits or sizeable monetary awards from civil cases against counterfeiters
- Focusing only on cheap fakes, forgetting that high-quality counterfeits may be far more damaging
- Looking for short-term miracles
- Focusing on the # of retail raids and seizures therefrom ('lawnmower approach')

- **Do:**

- Target fewer raids but against high-level manufacturers/distributors and backers ('dandelion approach')
- Increase the pain through criminal penalties
- Have a healthy scepticism of local manufacturers, distributors and partners

Criminal Enforcement Actions: Challenges and Strategies (PRC)

Administrative Enforcement Landscape (PRC)

- **AIC** (Administration of Industry and Commerce): TM-focused actions on factories/shops
- **TSB** (Technical Supervisory Bureau): TM-focused raids for cylinders/moulds at factories, also false labels
- **NCA** (National Copyright Authority): ©-focused raids
- National Patent Administration: patent focused
- Miscellaneous others: the General Administration of Customs; the General Administration of Quality Supervision, Inspection & Quarantine Administration; the State Intellectual Property Office
- **Challenges:**
 - Separate entities for IP rights may mean multiple raids
 - Quick, but no teeth: only fines

Criminal Enforcement Landscape (PRC)

- **PSB** (Police Security Bureau): Local Police
- **MPS** (Ministry of Public Security) : National Police
- **SPP** (Supreme People's Procuratorate): Prosecutor's Society

Criminal Enforcement Challenges (PRC)

- **Must meet criminal thresholds:**
 - @\$6,100 in business volume or \$3,600 in illegal profits (can differ for individuals and organizations)
 - Loopholes: Replicators routinely claim they sold disc for only 1RMB (@12 cents)
 - Regional thresholds may differ
- **Component parts may not be counted**
- **Must bring the complete case:** identified crime, perpetrators and prove thresholds
- **Overcoming high-Party official ownership, triad involvement and police corruption**



Criminal Enforcement Strategies (PRC)

- Do a **thorough investigation** to:
 - **Develop high-level targets**
 - Manufacturers
 - large distributors
 - key component part suppliers
 - Financial backers
 - Look broadly across investigations and leads to **determine links**
 - Know the **volumes and values** for each target
- Foster **relationships of trust** with police and prosecutors (e.g. look for training opportunities, bring good cases, recognize them for good work)

New PRC IPR Enforcement Referral Hotline and 50 Regional Referral Centers (29Aug'06)

- Sounds nice, but beware of leaks & lost leads

Nation establishes unified IPR violation hotline

By Liu Li

YIWU, Zhejiang Province: A unified nationwide reporting and complaint hotline for intellectual property rights (IPR) violations was established yesterday.

Now individuals or companies will be able to call 12312 to report any suspected IPR infringements.

At the same time, Yiwu has become the first county-level city in China to boast an IPR reporting and complaint centre.

The city, home to the world's largest small commodities wholesale market, has become the 50th place to establish such a centre, in response to the 2006-07 Action Plan on IPR Protection adopted by the State Council.

"The centres will help law enforcement authorities strike hard against IPR violations," Yao Guanghai, deputy secretary-general of the national IPR protection office, said yesterday.

According to work procedures, the centres will decide within five days whether to pursue a complaint.

If the complaint is accurate, it will be sent up to industry and commerce departments for administrative punishment, or to public security departments and public prosecutors for criminal punishment.

So far, the service centres have received over 6,000 reports and complaints.

Bai Gang, founding partner of Wan Hui Da Intellectual Property Agency, which represents France's Lacoste in its IPR lawsuits in China, said he believed that the newly-established report and complaint centres for IPR

protection would help foreign companies safeguard their rights.

"In the past, industry and commerce authorities have accepted reports on IPR violations, but foreign enterprises often feel confused over which level of department they should turn to," he told China Daily yesterday.

"But now it is much clearer for foreign companies after the establishment of the 50 centres. They can report and complain to the centre or call the hotline. And then the cases will be submitted to relevant authorities," Bai said.

China Daily, 29Aug'06



Don't Forget the Big Picture

BIG Picture Concept 1: Not JUST China...

- Counterfeit disc replicators and other manufacturers are all over
- Component parts manufacturers come from all over and from reputable companies
- The backers are often international
- Study the international distribution lines

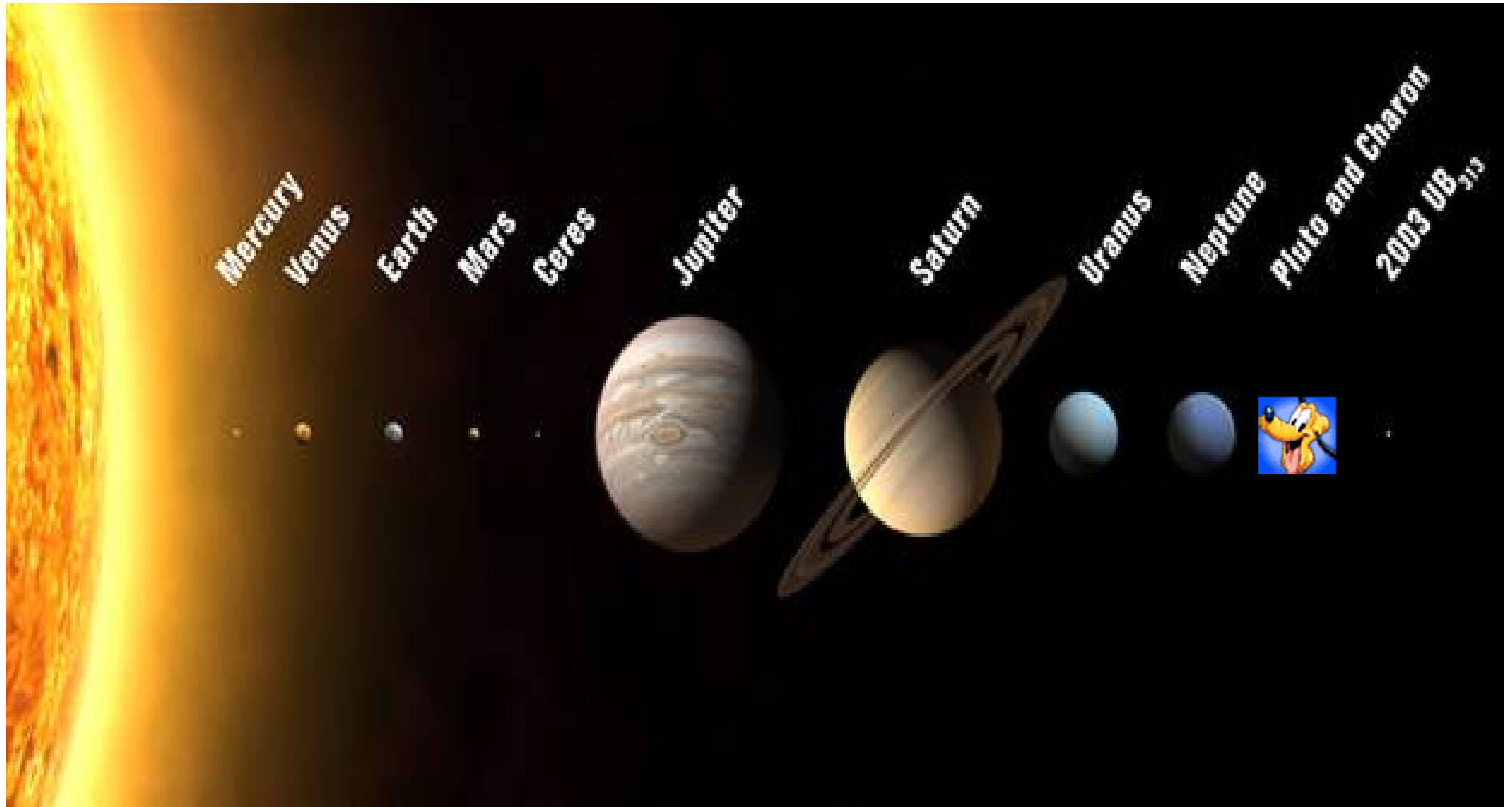


BIG Picture Concept 2: Understand your problem

- High-end counterfeits v. Low-end fakes
- Work to quantify the loss to the company
- Why are they pirating your product?
 - Consider economic, historical (disti/mfg policies), content access, cultural, nationalistic, justifiable ('Marco Polo')
- But beware of assumed 'truths'...



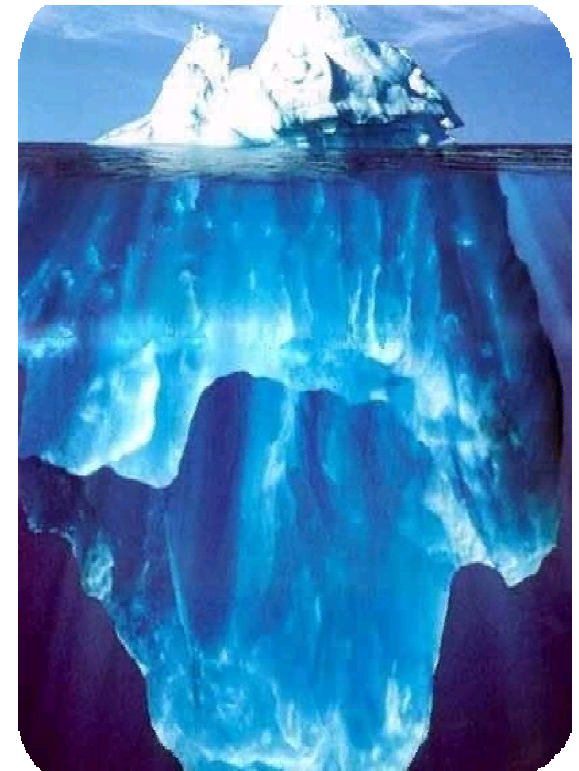
Scientists decide Pluto's no longer a planet (MSNBC 24AUG2006)



Martin Kornmesser / IA

BIG Picture Concept 3: Beware of Assumptions/Watch Paradigm Shifts

- **Asia's piracy problem won't change...?**
 - Slow, slow, slow, BOOM!
 - Japan
- **Watch for shift in manufacturing locations**
 - '90s: TWN>Paraguay
 - Now: Chile and Eastern Europe
- **Consider technological shifts:**
 - Computers & digital copies on © law
 - Temporary copies
 - Access codes
 - Internet & file sharing on distribution
 - Piracy
 - Digital distribution



BIG Picture Concept 4: Make New and Interesting Friends

- **Involve international law enforcement**
- **Reach out to competitors**
- **Use trade associations**
- **Find others fighting piracy**

Don't Make it Easy for Them

Implement Proactive IP Protection

- **Build-in IP protection** at the creation stage
 - Never trust a technological solution to IP security
 - Learn to speak techno-legal-criminese.....internationally
- Get **IP rights on file** (not only in sales countries, but also piracy locations) and **prepare ownership docs** ready
- **Understand weak points** in the sales and supply-chain to improve the prospects (e.g. Shanda in China)
- Build-in IP protection to your manufacturing and distribution agreements (e.g. **audit clauses**) and then actually **visit** during the term
- Have a **healthy scepticism** about your local manufacturers, distributors and representatives.

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